

REMARKS

The Office Action mailed July 28, 2008 has been received and reviewed. Each of claims 1-18, 20-30 and 32-36 stands rejected. Claims 1, 13, and 25 have been amended herein. In addition, a new claim 37 has been added herein. Care has been exercised to introduce no new subject matter. Reconsideration of the above-identified application in view of the above amendments and the following remarks is respectfully requested.

Addition of Claim 37

Claim 37 has been added herein. Claim 37 recites a system according to claim 1, wherein the automatically generated control commands are conditional such that at least one less than the set of features having a fault condition is deactivated to attempt to isolate the root or greatest contributing cause of the service fault or failure. The subject matter basis comes from [0019] of the present invention, which states "control oversight may be configured to be conditional, for example to at first deactivate or suspend two or three of the set of features when multiple or relatively widespread failures are being reported, to attempt to isolate the root or greatest contributing cause of the service fault or failure." *Specification*, [0019]. Care has been exercised to introduce no new subject matter. As such, Applicants respectfully request allowance of claim 37.

Rejections based on 35 U.S.C. § 103(a)

Claims 1-18, 20-30 and 32-36 are rejected under 35 U.S.C. § 103(a) as being unpatentable over DeBettencourt et al. (U.S. Publication No. 2002/0042823) in view of Barth et al. (U.S. Publication No. 2006/0123012).

A. Applicable Authority

Title 35 U.S.C. § 103(a) declares, a patent shall not issue when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” The Supreme Court in *Graham v. John Deere* counseled that an obviousness determination is made by identifying: the scope and content of the prior art; the level of ordinary skill in the prior art; the differences between the claimed invention and prior art references; and secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1 (1966).

To support a finding of obviousness, the initial burden is on the Office to apply the framework outlined in *Graham* and to provide some reason, or suggestions or motivations found either in the prior art references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the prior art reference or to combine prior art reference teachings to produce the claimed invention. See, *Application of Bergel*, 292 F. 2d 955, 956-957 (1961). Thus, in order “[t]o establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success [in combining the references]. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.” See MPEP § 2143. Recently, the Supreme Court elaborated, at pages 13-14 of *KSR*, it will be necessary for [the Office] to look at interrelated teachings of multiple [prior art references]; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by [one of]

ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the [patent application].” *KSR v. Teleflex*, 127 S. Ct. 1727 (2007).

B. Rejections Based on DeBettencourt and Barth

Claims 1-6, 8-18, 20-30, and 32-36 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over DeBettencourt and Barth in view of U.S. Patent Application Publication No. 2002/0042823 by DeBettencourt et al. (“DeBettencourt”) in view of U.S. Patent Application Publication No. 2006/0123012 by Barth et al. (“Barth”). As the combination of DeBettencourt and Barth fail to teach or suggest all limitations of the claims, either alone or in combination, Applicants respectfully traverse this rejection, as hereinafter set forth.

Independent claim 1, as amended herein, recites a system for monitoring a networked computer service for fault recovery. The networked computer service includes a set of features, wherein the set of features normally provide one or more panels of information for presentation on one or more web pages provided by the networked service to one or more users. When a fault condition for one or more features is detected in network status data, the system automatically generates control commands to dynamically adjust the set of features based on the fault condition, wherein the fault condition comprises undesired performance degradation of one or more features. The set of features are dynamically adjusted by deactivating the one or more features having a fault condition while maintaining active features in the set of features to continue to provide the networked computer service, such that the one or more web pages include panels of information from only active features while panels of information from deactivated features are omitted from the one or more web pages. In other words, when a feature included in a set of features for a service experiences a fault condition, the feature is deactivated

such that the remaining features may continue to operate without degradation from the deactivated feature such that the service may be provided to an end user.

DeBettencourt also fails to teach or suggest the dynamic adjustment of the set of features as a response to a fault condition. DeBettencourt states “[t]he manager can add or remove an application as part of a change in system configuration, or enable or disable an application for temporary adjustment.” *DeBettencourt*, [0051]. While a manager does have control to add or delete applications from one or more web servers, the manager does not do so in response to a fault condition. In contrast, the present invention adds the limitation such that the invention generates control commands “to dynamically adjust the set of features *based on a fault condition*.” *Specification*, Claim 1 (emphasis added). DeBettencourt is silent with respect to deactivating a feature based on a fault condition for the feature.

The Office acknowledges the shortcomings of DeBettencourt and attempts to rely on Barth. Applicants respectfully submit that even if Barth were combined with DeBettencourt, the resulting combination would still fail to teach or suggest all limitations of independent claim 1 as amended herein. In particular, Barth fails to teach or suggest dynamically adjusting a set of features by deactivating a feature having a fault condition to maintain active features to continue to provide a service wherein the fault condition comprises undesired performance degradation of one or more features. In contrast to the invention of claim 1, Barth merely discusses a dynamic information connection engine for searching information. *See, e.g., Barth*, Abstract. The portion of the reference cited by the Office Action discusses searching travel information and using a timer to determine when search results are considered valid. *See, e.g., id.*, ¶¶ [0112], [0113]. After the time period expires such that search results are considered no longer valid, the search results are deactivated. *Id.* Intentionally deactivating search results when search results are no

longer considered valid based on a timer as in Barth is different from deactivating features having an undesired fault condition to maintain other active features as recited in claim 1. Accordingly, Barth fails to cure the deficiencies of DeBettencourt as the combination of references would still fail to teach or suggest all features of claim 1.

As such, DeBettencourt and Barth fail to describe, either alone or in combination, either expressly or inherently, multiple features of claim 1 as amended herein. Therefore, claim 1 is patentable over DeBettencourt and Barth.

Independent claim 13, as amended herein, recites a method for monitoring a networked computer service for fault recovery. The method comprises receiving network status data from a network monitor monitoring a computer services network and automatically generating control commands to deactivate one or more features based on a fault condition in the network status data. The method further comprises deactivating the one or more features while maintaining active features in the set of features to continue to provide a portion of the computer networked service. As in claim 1, the set of features normally provide one or more panels of information for presentation on one or more web pages provided by the networked service to one or more users. In contrast to claim 1, however, the fault condition of claim 13 comprises unintentional performance degradation in the presentation of one or more features.

In contrast to claim 13, Barth fails to teach or suggest dynamically adjusting a set of features by deactivating a feature having a fault condition to maintain active features to continue to provide a service wherein the fault condition comprises unintentional performance degradation in the presentation of one or more features. In contrast to the invention of claim 13, Barth merely discusses a dynamic information connection engine for searching information. *See, e.g., Barth*, Abstract. The portion of the reference cited by the Office Action discusses searching

travel information and using a timer to determine when search results are considered valid. *See, e.g., id.*, ¶¶ [0112], [0113]. After the time period expires such that search results are considered no longer valid, the search results are deactivated. *Id.* Intentionally deactivating search results when search results are no longer considered valid based on a timer as in Barth is different from deactivating features having an unintentional fault condition to maintain other active features as recited in claim 1. Accordingly, Barth fails to cure the deficiencies of DeBettencourt as the combination of references would still fail to teach or suggest all features of claim 13.

As such, DeBettencourt and Barth fail to describe, either alone or in combination, either expressly or inherently, multiple features of claim 13 as amended herein. Therefore, claim 13 is patentable over DeBettencourt and Barth.

Independent claim 25, as amended herein, recites a networked computer service comprising a set of features, the networked computer service being monitored for fault management according to a method comprising receiving network status data from a network monitor monitoring a computer services network and automatically generating control commands to deactivate one or more features based on a fault condition in the network status data. The method further comprises deactivating the one or more features while maintaining active features in the set of features to continue to provide a portion of the computer networked service. As in claim 1, the set of features normally provide one or more panels of information for presentation on one or more web pages provided by the networked service to one or more users. In contrast to claim 1, however, the fault condition of claim 25 comprises suspension of one or more features.

In contrast to claim 25, Barth fails to teach or suggest dynamically adjusting a set of features by deactivating a feature having a fault condition to maintain active features to

continue to provide a service wherein the fault condition comprises suspension of one or more features. In contrast to the invention of claim 13, Barth merely discusses a dynamic information connection engine for searching information. *See, e.g., Barth*, Abstract. The portion of the reference cited by the Office Action discusses searching travel information and using a timer to determine when search results are considered valid. *See, e.g., id.*, ¶¶ [0112], [0113]. After the time period expires such that search results are considered no longer valid, the search results are deactivated. *Id.* Intentionally deactivating search results when search results are no longer considered valid based on a timer as in Barth is different from deactivating features having a suspension of one or more features to maintain other active features as recited in claim 1. Accordingly, Barth fails to cure the deficiencies of DeBettencourt as the combination of references would still fail to teach or suggest all features of claim 25.

As such, DeBettencourt and Barth fail to describe, either alone or in combination, either expressly or inherently, multiple features of claim 25 as amended herein. Therefore, claim 25 is patentable over DeBettencourt and Barth.

Independent claims 1, 13, and 25 are patentable over DeBettencourt and Barth. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 1, 13, and 25 under 35 U.S.C. § 103(a). Claims 1, 13, and 25 are believed to be in condition for allowance and such favorable action is respectfully requested.

Claims 2-4, 8-12, 14-16, 20-24, 26-28, and 32-37 depend directly or indirectly from independent claims 1, 13, and 25. As such, Applicants respectfully request withdrawal of the 35 U.S.C. § 103(a) rejections of these claims as well.

CONCLUSION

For at least the reasons stated above, claims 1-8, 10-18, 20-30 and 32-37 are now in condition for allowance. Applicants respectfully request withdrawal of the pending rejections and allowance of the claims. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned – 816-474-6550 or jgolian@shb.com (such communication via email is herein expressly granted) – to resolve the same. It is believed that no fee is due, however, the Commissioner is hereby authorized to charge any amount required to Deposit Account No. 19-2112.

Respectfully submitted,

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